IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl. Revn. No. 291 of 2006

DATE OF DECISION : 29.08.2006

Manohar Lal Kataria

.... PETITIONER

Versus

State of Punjab and another

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

Present: Mr. A.K. Sharma, Advocate,
for the petitioner.

* * *

Petitioner Manohar Lal Kataria, who is complainant in case FIR No. 42 dated 28.9.1997 under Sections 406/420 IPC, registered at Police Station Gidderbaha, has filed this revision petition against the judgment dated 1.8.2005, passed by Sub Divisional Judicial Magistrate, Gidderbaha, whereby the accused-respondent No.2 Sat Pal has been acquitted of the charge framed against him.

2. The State of Punjab has not filed any appeal against the impugned judgment of acquittal.

3. I have heard counsel for the petitioner and gone through the impugned judgment.

4. In this case, the complainant Manohar Lal Kataria was a tenant of Smt. Durga Devi, mother of accused Sat Pal. As per the allegations, the accused, being general power of attorney holder of his mother, claimed the rent from the complainant from 1.1.1991 to 31.12.1993. The complainant paid the arrears of rent as claimed in the petition. A receipt was issued by the accused. It has been further alleged that subsequently, Jatinder Pal-son of the accused, filed an application for ejectment from the demised premises against the complainant claiming himself to be owner of the shop on the basis of a Will executed by Smt. Durga Devi in the year 1997. In that petition, he also claimed rent from 1.1.1991 to 31.12.1993. It has been alleged that during the said proceedings, it came to the notice that the

accused had recovered the rent from the complainant for the said period by mis-representing that on the day of payment, Smt. Durga Devi was alive, whereas in fact she was dead at that time.

5. The trial court, after taking into consideration statements of the various witnesses examined by the prosecution, came to the conclusion that though the accused had received the aforesaid rent from the complainant on 28.7.1996 and on that day, his mother was not alive, but the prosecution has failed to prove that the accused was having a bad intention to cheat the complainant while receiving the arrears of rent from the complainant. He was also one of the legal heirs. In the evidence, it has come that when the complainant made the payment of rent to the accused, he was aware of the death of Durga Devi. Therefore, the dishonest or fraudulent intention of the accused at the time of receipt of the rent has not been established. Thus, it was held that no offence under Section 420 IPC was proved. Regarding the offence under Section 406 IPC, it was found that there was no evidence on the record to prove that the complainant ever made demand for return of the amount of arrears of rent received by the accused or that the accused had ever refused to return this amount, which was alleged to have been misappropriated by him.

6. After hearing counsel for the petitioner, I do not find any illegality or infirmity in the impugned judgment, which may require any interference by this Court in this revision. In my opinion, from the evidence available on record, no second view is possible.

7. Dismissed.

August 29, 2006 **(SATISH KUMAR MITTAL)**
ndj **JUDGE**